# Before the FEDERAL COMMUNICATION Washington, D.C. 20554

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Elehue K. Freemon and Lucille K. Freemon	)	CC Docket No. 944 - 8	39
Complainants,	)		
<b>V.</b>	)	File No. E - 90 _ 393	RECEIVED
AT&T CORP. ,	)		DEC 0 7 1994
Defendant.	)		FCC MAIL ROOM

Presiding Judge Honorable Walter C. Miller

Complaints Opposition and Counter motion to AT&T's Corp. Summary Decision Dated

November 22, 1994.

Pursuant to Section 1.251 (b) of the Commission Rules 47 CFR 1.251 (b) complainant Mr. Elehue K. Freemon hereby moves for the dismissal for AT&T Summary Decision in this case.

As the complainant will show below the AT&T's Summary Decision is Flawed with misleading statements to give the commission a wrong impression in Bad Faith. (1)

In showing the misleading of statements the complainant will use previous offered pleadings, depositions and evidence sent to the commission.

The commission will see the shifting testimonies of AT&T and find in favor to grant dismissal and summary judgment on certain evidentiary issues for the complainant(s).

No. of Copies rec'd

List A B C D E

Diamond Drill Contracting Co. v. International Diamond Drill Contracting Co. 106 Wash. 72, 179 P. 120,122.

The foundation of AT&T's Motion for Summary Decision from pages one thur ten are primarily from excepts from Mr. Elehue K. Freemon (Mr. EKF) and Mrs. Lucille K. Freemon (Mrs. LKF) depositions.

Judge Walter C. Williams in his arguing comments to AT&Ts objections on November 28, 1994 in accepting the depositions of Mr. EKF and Mrs. LKF as a whole into the record cited to this effect ... that caution to all the parties that statements not yet brought into record may not be favorable to certain parties position found in these texts, [ depositions ].

With Judge Williams fore sight Mr. EKF will show a few examples to AT&T's misleading, confusing and contradicting testimonies.

In this example Mr. EKF supposedly admitted to claims of incoherency and actual problems of breathing by AT&T stated at AT&Ts RESPONSE TO COMPLAINANTS' MOTION TO ACCEPT LATE FILE [ D ] PLEADING DATED AUGUST 8, 1991, Page 3, supposedly to be accurate in reciting complainants comments at Formal Complaint, page 8, paragraph 26 [ or first paragraph ] sentence two.

The complainant at no time admitted to "... sounded incoherent and was having trouble breathing ..", exhibit one.

AT&Ts statement as shown at exhibit 1 of August 8, 1991 traces back to Formal Report Summary and Relief, last paragraph pages 7 and continued to the top of page 8, Exhibit 1 (a).

Finally coming to the original source of the statement reference by the complainant Mr. EKF at Formal Report Summary and Relief is AT&Ts April 28, 1989 letter page 1 and 2 paragraph three. Exhibit 1 (b),

Another example compares AT&Ts Answer September 20, 1990, page 8, paragraph 31 with the misleading statements by AT&T attorneys showing the statement coming from the operator Ms Zolinkvo at AT&Ts RESPONSE TO COMPLAINANTS'

MOTION TO ACCEPT LATE FILE [ D ] PLEADING, Dated AUGUST 8, 1991.

At exhibit 2 note that AT&T Answer, page 8, Paragraph 31, second sentence

states .... "The AT&T operator then established a connection to the emergency number for Gresham, Oregon, and explained the situation. ", exhibit 2.

The operator has also been established by AT&T on numerous occasions including AT&Ts traffic ticket sent with AT&T September 8, 1989 letter to Ms. Maeola Black of the FCC to her actions.

At AT&Ts RESPONSE TO COMPLAINANTS' MOTION TO ACCEPT LATE FILE

[D] PLEADING, Dated August 8, 1991, page 8, second paragraph, ... "However, the

AT&T operator [Ms Zolinkov] remembers otherwise \*\* and the Police Report (at 2)

corroborates the Operator's [again operator is identified by AT&Ts pleadings]

recollection by stating that the conversation took place between Mrs. Freemon

and the emergency agency. Exhibit 2 (a) [brackets added]

(footnote)

Note AT&T obvious change of testimony represents the fears of Judge Williams changing of statements in bad faith.

In further reading of this paragraph the Police Report statements were received from the final dispatcher Employee number 20213 Mr. Alan Trowle [ 1 ] which was received from the Initial dispatcher Employee No. 10032 Ms. Jocelyn Browne [ 2 ] which was received from the call taker Employee No. 19631 Sharon Lampl [ 3 ] who spoke directly to operator Ms. Nancy Zolinkov the divulger.

This is Triple hearsay not as purported by AT&T on page 8, of AT&Ts MOTION FOR SUMMARY DECISION in comparison to ReShea Plunkett's account under Rule 803 (1), (2), who received her information from Ms. LKF directly.

To continue AT&Ts understanding of hearsay Mrs. LKF while on the telephone announced to Mr. EKF the [ the ] operator wanted to speak to her. " The " operator as

<sup>\*\*</sup> AT&T's Operator recollects that it was Mr. Freemon who she connected to the agency (Answer, Para. 31), but does recollect that she referred the call rather than relating the information herself.

spoken to Mr. Freemon by Mrs. LKF alone identified the same operator that assisted the call. A operator as noted is generally considered any operator and would have been unknown to Mr. EKF and Mrs. LKF. 2

AT&Ts interpretation is absolutely flawed and can not be relied on therefore the complainants request the continuation of this case.

The issue of evidence is also noted on page 10 in reference to the 911 notes by City of Portland, Oregon bureau of Emergency Communications Mr. Paul Stein. We wish to enter in to record under CFR 1.251 (c) and Federal Rules of Evidence Rule 801 (a) (b), 801 (d) (1) (A) (B) (C), Rule 65 (b), Rule 803 (1), (3) (12), Rule 803 (6); Exhibit 3.

The complainants at this juncture would like to recommend the dismissar, an or pages one to eleven in AT&Ts MOTION FOR SUMMARY DECISION.

## II. Pages 12 thur 13

The answer to AT&Ts State to Claim Under 705 of the Communications Act and the issue of AT&Ts interpretation of section (2)(a)(i) of Title 18 as recommend in paragraph 10 of the Hearing Designation Order, CC Docket No. 94 - 89 can only be answered by the review of the Commission by the continuation of this case.

## Ill. Action Is Time Barred Under Section 415 of the Communications Act.

AT&T has failed to see this is a Administrative case.

Courts are generally very careful about agencies' compliance with their own procedural rules.

One of the most firmly established principles in administrative law is that an

<sup>3. 803</sup> Recored Recollection U.S. v. Kelly, 349 F.d 720, 770 (2d Cir. 1965); Annot., 82 A.L.R.2d. 472, 520; 803 (6) Records of Regularly Conducted Activity

<sup>2.</sup> Webster New Dictionary defines the word the as 1. a particular person or thing; as opposed to a.

agency must obey its own rules. However, while an agency may not ignore its rules it may reasonably refuse to follow its rules if it gives a sound reason for doing so. 1 Koch, Fed. Admin. Law & Prac. -- 8.

Nevertheless, this is not a rule without exception. The Supreme Court adopted this principle in *United States v. Caceres.*4 Caceres arose when the IRS attempted to introduce into evidence in a criminal case information obtained in violation of its own regulations. Respondent challenged the introduction of tapes of face - to - face conversation between respondent and and IRS agent because a regulation which required prior internal authorization was not followed by the IRS agent. The government conceded that the tapes were made in violation of regulations but argued that exclusion of probative evidence in a criminal trial is an inappropriate case sanction for violation of an agency's rules. Neither the Constitution nor federal law, the Court found, required the IRS to adopt these regulations. The Court held that evidence in a criminal case should not be excluded merely because it was obtained in violation of an agency rule. It distinguished this case from those cases in which a rule was not followed in a proceeding covered by the APA.5 Therefore, at least in some contexts the agency may not have to obey its own rule.

In order to avoid applying its own rules [47 CFR 1.718], an agency is generally required to give sound reasons for doing so.

Therefore the complainant must rely on the answer from the Federal Communication Commission.

#### CONCLUSION

For the reasons stated above, the Commission should enter a dismissal of AT&Ts MOTION FOR SUMMARY DECISION and grant the acceptance in to record

<sup>4. 440</sup> U.S. 741, 99 S. Ct. 1465, 59 L..Ed.2d 733 ( 1979 )

<sup>5.</sup> Id. at 754, 99 S.Ct. at 1472.

all exhibits under the Rules mentioned within this pleading.

Respectfully submitted, Complainant

Mr. Elehue K. Freemon General Delivery

Big Bear Lake, Ca. 92315

December 3, 1994

# **EXHIBIT** 1

spoke to Mr. Freemon's mother about the situation. She then connected the Freemon call to the emergency agency at the request of Mrs. Freemon. The emergency agency evidently thereafter dispatched officers to investigate, who ultimately took Mr. Freemon to a mental hospital after concluding that he was suicidal and under the influence of drugs.

Mr. Freemon himself admits a salient point in this narrative (Complaint, ¶ 26): that when talking to the AT&T Operator he "had forgot an Area Code Number, sounded incoherent and was having trouble breathing". These admitted facts corroborate the Operator's observation that "Mr. Freemon sounded incoherent . . and she thought he may have been having trouble breathing."\*

Based upon these undisputed facts, Ms. Zolnikov reasonably concluded that treatment of the call as a possible emergency situation was warranted.\*\* Despite their rhetoric, complainants present absolutely no evidence that this decision was a result of deception, fraud or sinister motives that would constitute "bad faith" on the part of Ms. Zolnikov or AT&T.

Complainants themselves appear to recognize the crucial importance of these facts. Complainants have admitted:

<sup>\*</sup> Answer, ¶ 27.

<sup>\*\* &</sup>lt;u>Answer</u>, ¶ 28.

Exhibit 1 (a)

# Formal Report Summary and Relief

Contact was established to AT&T through Ms. Mary Rudder December 1988 at (201) 221-8037. The results were very negative in respect to disclaiming that a collect phone call was ever made on May 30, 1988 at any time to Gresham, Oregon to Long Beach, California.

Letter correspondence with Michael J. Kmetz and Phillp L. Hartfield of AT&T was assisted by Maeola V. Black, FCC Carrier Analyst, Washington D.C., IC-89-03060. 47 CFR Ch.1, 1.711, 1.719, (filing date of Informal complaint), of the 208 Communication Act.

This formal compliant is balanced upon whether an <u>emergency situation</u> ever <u>existed as claimed by AT/T.</u> Further more can AT&T, other then original parties, intrude upon a sane, healthy/nonthreatening and lawful telephone transmission as part of a operators job assignment without requesting permission from calling parties, or Judicial Court order(s) to intercept information to <u>divulge</u> against original users/ calling parties about what was said on the telephone and to further request an emergency situation without consulting the parties involved in the claimed emergency in progress by AT&T which was against the original caller(s)/user(s).

Is the Law protecting our civil rights of privacy in our homes/business under the U.S. Constitution, and FCC regulations and U.S.statues or does AT&T a telecommunications companys manual on <u>Operating Procedures and Policies for Operators</u> reflect so strongly as to lessen or even null our U.S. laws natural or statutory? Navarra v. Brachce Halsen Stuart Shields Inc.510 F. Supp. 83; Carey v. Population Services Intern 97 S.Ct. 2016.

AT&T has no legal or moral right to interfere with a perfectly wholesome and legal phone communication without the express permission to eavesdrop or divulge information, to have Mr, Elehue K. Freemons home forcefully invaded by the Gresham police without warrant, wrongfully searched without warrant, unduress handcuff, transported to a hospital facility to have painful medical treatment administered unduress, imprisoned under false pretenses, druged, denied legal counsel before being force/threaten to speak to a unknown Physicians causing great trauma and loss of his entire lifes lively hood/income.

The letter of correspondence from AT&T are contradictory of each other on points of this incident, divulge or request for permission and gathering of facts.

The AT&T April 28, 1989 letter points out the reasons of why the intrusion, unknown to the users, took place. As stated Mr. Freemon had forgot an Area Code Number, sounded incoherent and was having trouble breathing. The points were explain in Mr. Elehue K. Freemon Statement of Events letter and has not changed unlike the AT&T letters.

In his own home Mr. Freemon had three glasses of wine over a three hour period, with a slight nasal problem combined with jumping on a trampoline, 2.6 feet from the telephone used. The location was in a section of his home/business complex with the temperature of approximately 50 F. degrees. All of which is not at all illegal in the State of Oregon nor under any laws in the U.S. Hospital report NO. 25-45 75, laboratory findings had "No abnormal toxicity" or any external damage to the skin.

AT&T is not a established medical advisory facility to impart medical advice of trouble breathing without consent /consulting from the victim which are proven first aid methods for all conscious and sane adult victims in any emergency. American Red Cross First Aid; Mr. Elehue K. Freemon at the time was 36 years old and of sane mind; Hawaii Psychiatric Soc Dist. Branch v. Ariyoshi, Sura 481 F. Supp. at 1037 (11); U.S.C.A. Const. Amends 4th, 14th; Emergency Employment Doctrine, Hall v. O.C.Whitaker CO.,143 Tex, 397, 185 S.W. 2d, 720; Whalen v. Roe; Delware v. Prouse; Carey v. Population service Intern 97 S. Ct. 2016 (forcing unwanted services and possible harmful services to be illegal).

To this day AT&T has not proven if there was any type of caller emergency for the caller(s) or requested by the caller(s).

In further examination in the April 28, 1989 AT&T letter you will find differences in how the contact and communication between the AT&T operator and Mrs. Lucille Freemon compared to the AT&T September 8th 1989 letter. In this letter the AT&T operator claims that Mrs. Lucille K. Freemon immediately after the two to three second recognition of her son, for a collect call, immediately requested "to get medical assistance for him..." then immediately hang up" as stated in the April 28,1989 AT&T letter.

The September 8th letter changes its timing between the recognition call between Mr. Elehue K. Freemon and Mrs. Lucille Freemon and the communication between the AT&T operator and Mrs. Lucille Freemon. This timing change was prompted by Mr. Elehue K. Freemons May 21, 1989 letter to AT&T on Page 3 Question 3, etc.

Exhibit 1 (b).

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Michael J. Kmetz
District Manager

Room 32B18 55 Corporate Drive Bridgewater, NJ 08807-6991 201 658-8882

April 28, 1989

Ms. Maeola Black, Carrier Analyst
Informal Complaints and Public
Inquiries Branch
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W. - Room 6319
Washington D.C. 20554

#### Dear Ms. Black:

In accordance with our April 14, 1989 request for additional time, this is in response to your Notice of Informal Complaint dated March 15, 1989 (Reference 63203, File No. IC-89-03060), which forwarded correspondence the Commission received from Mr. Elehue K. Freemon of Long Beach, California. In his letter, Mr. Freemon requested, among other things, an investigation of a 911 call placed with the assistance of an AT&T operator on May 30, 1988. Only a small portion of Mr. Freemon's complaint relates to AT&T operations. The bulk of it describes actions allegedly taken by a police force, ambulance service and hospital in the vicinity of Portland, Oregon.

Regarding AT&T, Mr Freemon claims to have placed a collect call from Gresham, Oregon, to his mother in Long Beach, California, on May 10, 1988. He claims that at the beginning of the call an AT&T operator twice asked if he needed assistance, and that she later interrupted the call to ask Mrs. Freemon if her son needed help.

/ AT&T's records show that around 10:40 p.m. on May 30, 1988, an AT&T operator in Portland, Oregon, put through a call originating from Mr. Freemon's number to the emergency number for Gresham, Oregon (503-760-6911). We interviewed the operator who handled the call and she reports as follows,

Mr. Freemon initially told her he wanted to call his mother. He gave her the 7-digit number (427-2438) and the city, but he did not know the area code. Mr. Freemon sounded incoherent to alla mallia di baden

the operator and she thought he may have been having trouble breathing: 5The operator put the call through to the number she was given and told the person who answered that she believed the calling party was her son. The answering party confirmed to the operator that it was her son on the line. She then told the operator to get medical assistance for him and gave the operator Mr. Freemon's name. Sone of the parties then hung up, and the operator connected the call to the emergency number for Gresham, Oregon. When the emergency agency answered, the operator gave Mr. Freemon's name and telephone number and said that medical assistance was requested. The answering party at the emergency agency said she would handle the call. The operator checked her console to verify that the call had not been disconnected, then released the line to the emergency agency. The operator has no knowledge of events that occurred after she released the call. We understand that Mr. Freemon has instituted civil litigation against the City of Gresham in connection with subsequent events.

Based on our investigation, this call was handled appropriately by the AT&T operator. We found no support for claims to the contrary in Mr. Freemon's letter.

We trust this provides your office with the required information regarding this matter.

Yours truly,

Michael J. Kmetz

District Manager

cc: Mr. Elehue K. Freemon

# EXHIBIT 2

Mrs. Freemon confirmed to the AT&T operator that it was her son on the line.

- 30. The AT&T operator told Mrs. Freemon that she believed her son might be having a medical emergency.

  Mrs. Freemon then told the AT&T operator to get medical assistance for him, and gave the AT&T operator

  Mr. Freemon's name.
- Mrs. Freemon then hung up. The AT&T operator then established a connection to the emergency number for Gresham, Oregon, and explained the situation. The answering party at the emergency agency said she would handle the call. The AT&T operator then connected Mr. Freemon and released the line to the emergency agency. The AT&T operator has no knowledge of events that occurred after she released the call.
- 32. The AT&T operator did not surreptitiously monitor any telephone conversation between the Freemons.
- 33. The AT&T operator acted properly in relaying the call to the emergency agency, in accordance with AT&T's obligations under 18 U.S.C. § 2511(2)(a)(i). This section establishes that where AT&T's "facilities are used in the transmission of a wire communications", it is not unlawful for an AT&T operator "to intercept, disclose, or use that communication in the normal course of [her] employment while engaged in any activity which is a

Exhibit 2 (a)

dispatched competent professionals to Mr. Freemon's gymnasium to determine if he needed help. When they determined that he did need help, they acted accordingly.

Mr. Freemon now explicitly states that he approves, even in some cases "applauds", the conduct of the police, ambulance and hospital personnel who attended him.\* The actions of the AT&T Operator in referring an apparently distressed individual to a properly conducted investigation and care by competent police, ambulance and hospital professionals is no cause for Mr. Freemon or his mother now to complain, or to seek damages from AT&T.

Complainants have also complained that the AT&T Operator herself spoke to the emergency agency, rather than simply connecting the Freemon call. However, the AT&T Operator remembers otherwise,\*\* and the Police Report (at 2) corroborates the Operator's recollection by stating that the conversation took place between Mrs. Freemon and the emergency agency. Contrary to complainants'assertions (Abbreviations, at 1-2), nothing in the SOEA report states whether the AT&T Operator or Mrs. Freemon spoke directly with the emergency agency. In fact, the SOEA report indicates that Mrs. Freemon said "THAT [MR. FREEMON] IS

<sup>\* &</sup>lt;u>Interrogatories Reply</u>, at 7, 8, 13, 15-16, 19-20, 24-25.

<sup>\*\*</sup> AT&T's Operator recollects that it was Mr. Freemon whom she connected to the agency (Answer, ¶ 31), but does recollect that she referred the call rather than relating the information herself.

STRUNG OUT ON DRUGS AND NEEDS HELP", which suggests the SOEA conversation was probably with Mrs. Freemon herself, thus further corroborating the AT&T Operator's recollection. Moreover, even if the AT&T Operator had spoken directly with the emergency agency, it would have been a warranted incident to AT&T's emergency service and operating practice quoted above under the circumstances, and thus authorized by 18 U.S.C. § 2511(2)(a)(i).

Complainants' Reply (at ¶¶ 12, 14) insists that the AT&T Operator made a "misleading divulgence" to the emergency agency that he had been using "drugs". But even if the AT&T Operator (rather than Mrs. Freemon herself) had relayed Mrs. Freemon's remark to the Operator (see SOEA report) that she suspected a drug-use situation, this would have been entirely justified based upon Mrs. Freemon's own request and based upon Mr. Freemon's admittedly confused and disordered behavior on the telephone. The reasonableness of the AT&T Operator's communication -- even if she had in fact been the person who communicated with the emergency agency -- is confirmed by the police officers' similar conclusion that Mr. Freemon was under the influence of a drug, and indeed by Mr. Freemon's own admission to the police that he had taken sleeping pills.\*

<sup>\*</sup> Complainants now claim that the term "drugs" cannot be construed as including the alcohol and sleeping pill's (footnote continued on following page)

# **EXHIBIT** 3



Earl Blumenauer, Commissioner Sherrill L. Whittemore, Acting Director 9911 SE Bush Street Portland, Oregon 97266-2505

(503) 823-0911 Fax: (503) 762-0334

# **MEMORANDUM**

DATE:

November 22, 1994

TO:

Elehue K. Freemon

FROM:

Paul Stein, Assistant Director

RE:

Verification

Enclosed you will find the Verification you requested, notarized this date.

### PS/mkd

c:

Tom Williams, City Attorney File-Legal-General Correspondence

## **VERIFICATION**

STATE OF OREGON	)	
	)	<b>88.</b> :
COUNTY OF MULTNOMAH	}	

Paul Stein, being duly swom says:

- 1. I was the Operations Manager representing The City of Portland, Oregon Bureau of Emergency Communication on September 12, 1991.
- 2. I have read the letter of September 12, 1991 sent to the Complainant Mr. Elehue K. Freemon requesting clarification and/or Interpretation of the information found in incident notes. No. #1254 made on May 30, 1988 at 22:39:43 to be my letter and signature.

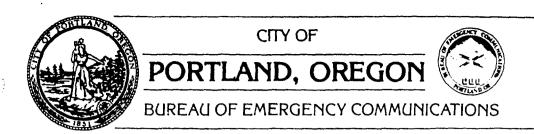
3. These notes No. #1254 were taken by Caller taker Sharon Lampl, No. 19631, on May 30, 1988 involving Mr. Elehue K. Freemon.

Paul Stein

Subscribed and swom before me this 22 Day of November, 1994.

Notary Public





Dick Bogle, Commissioner 2960 S.E. 103rd Drive Portland, Oregon 97266 (503) 760-6730

September 12, 1991

Elehue K. Freeman 730 W. Columbia Long Beach, CA 90806

Dear Mr. Freeman:

I am responding to the information requested in your letter dated August 16th, 1991, asking for clarification and/or interpretation of the information found in incident #1254 of 5/30/88 at 22:39:43.

The caller appears to be AT & T, (see name field), and this appears to be confirmed by the statements being made in the MISC INFO field. Specifically,

"M subj at this loc placed long distance call to mom in LA,,,Then hung up...Mom told operator to get help for her son, but did not have the address,,sed that he is strung out on drugs and needs help...No name for mom, but son is Eleue Freeman...Moms phone #1 213 427 2439,,,"

In other words it appears that because of the disconnection the mother then called an operator (whoever her long distance carries is) apparently an AT & T operator, and requested that the operator call for emergency help for her son.

Based on this request, a supervisor at 9-1-1 (see MISC INFO) called the phone company for a trace on Mr. Freeman's address.

\*\*\*4964/1/2246...traces to above..Rockwood/Gresham Gym \*\*\*2302 C3 Amb and Fire Res Ordered.

Mr. Freeman Complaint Response September 12, 1991 Page Two

The trace referred to gave us the address of 2127 NW Eleven Mile Ave. Gresham Police were dispatched to the location, and after arriving they requested a medical response as noted above.

Regarding the computer clock. BOEC does not keep records relating to the setting of the computer clock, therefore it is impossible to state with any accuracy how our clock compared with any other clock for that specific day in question.

Sincerely,

Paul Stein

Operations Manager

PS/kma cc: file enclosure

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